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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,861	11/05/2003	Phillip Eugene Koloff JR.	9D-HR-25403	7798

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EXAMINER

AYRES, TIMOTHY MICHAEL

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 05/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/701,861	Applicant(s) KOLOFF ET AL.	
	Examiner Timothy M. Ayres	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 06 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-17, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) 8-10 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5 and 7 is/are allowed.
- 6) ☒ Claim(s) 11, 16, 17, 19 and 20 is/are rejected.
- 7) ☒ Claim(s) 12-15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is a second office action on the merits of application SN 10/701,861.

Election/Restrictions

1. Newly submitted claim 8 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The addition of the limitation of a bottom pan changes the invention claimed to a different invention since the original limitation of a pan support did not require a bottom pan.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 8-10 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

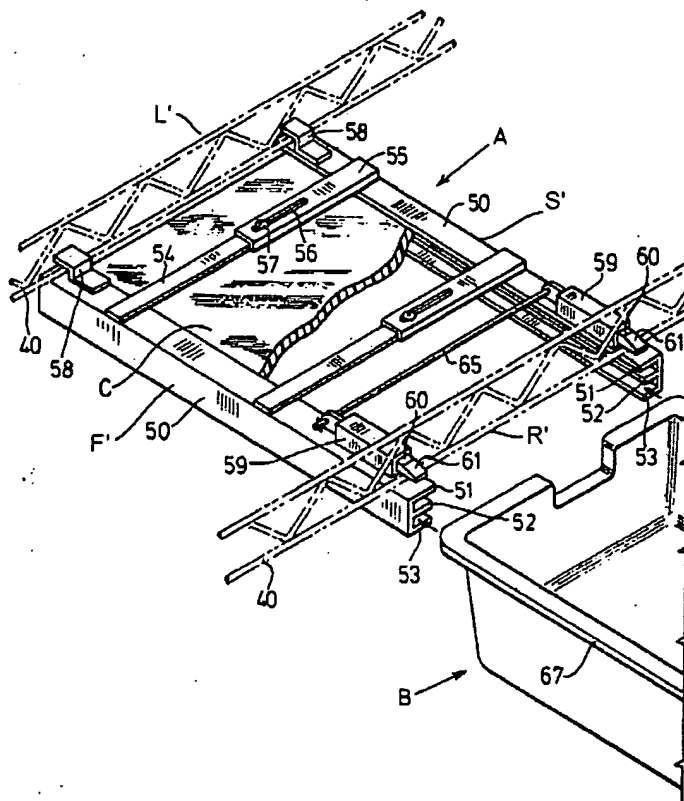
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 11 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,241,668 to Carroll. Carroll '668 discloses a drawer assembly with a pan support (A) made up of a wire member (35,40) having a first side (R') and a second side

Art Unit: 3637

(L'). A first bracket (F') coupled to the first side (R') so that is removable without tools by pulling on a rod (65) to release latches (61). A second bracket (S') coupled to the second side (L') so that the second bracket (S') is removable without tools also when the rod (65) is pulled. The second (S') bracket is substantially identical to the first bracket (F'). The first bracket (F') is coupled to the first side (R') by the latch member (61) and the second bracket (S') is coupled to the second side (L') by a hook member (58). The term refrigerator is nomenclature which is given no patentable weight. The first bracket (F') is a mirror image of the second bracket (S') and is therefore is in a reverse or inverse orientation from each other.



Carroll '668 Figure 3

4. Claim 17, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4,283,038 to Kurtz. Kurtz teaches a bracket (11) comprising a side wall (11a), a first rail (11b), a second rail (11c), a first lip portion (11d), a second lip portion (11e). Slots (13a, 13a') are located in the first rail (11b) and slots (11b, 11b') are located in the second rail (11c). "Sized to receive" is taken to mean that a slot has to be capable of receiving a U-shaped member and Kurtz's slot is capable of receiving a U-shaped member of some size. A slot is also considered to be an aperture and is also capable of receiving a hook of some kind. The pan support wire is not positive recited in the claims and therefore has no weight other than the slots and apertures being capable of receiving the hooks and u-shaped member.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

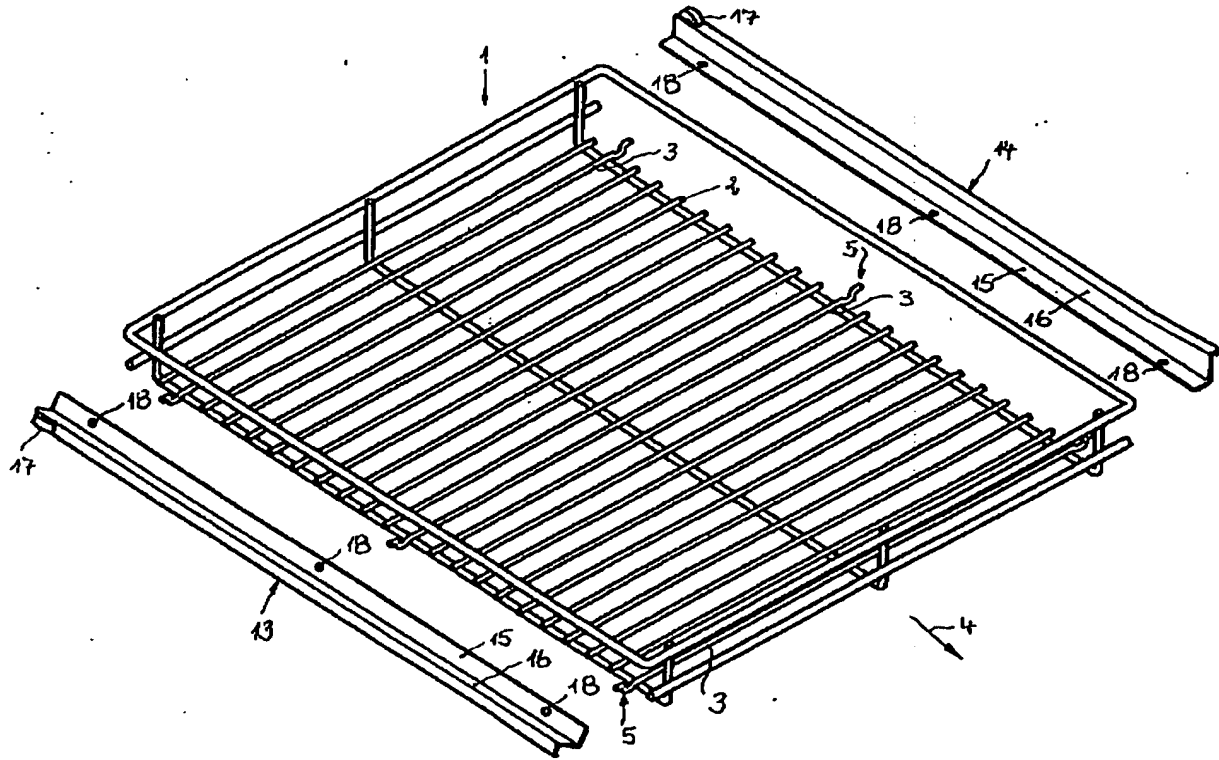
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

Art Unit: 3637

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. Claims 17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent DE 296 14 997 to Kesseboehmer in view of U.S. Patent 4,967,989 to Bender and US Patent 3,611,661 to Chambers. Kesseboehmer '997 discloses a pan support wire member (1,3) with hooks (5) that project lateral on the sides to be received in apertures (18) on a rail (15) of a bracket (14). The bracket (14) has a sidewall (16), a first rail (13) and a second rail (15).



Kesseboehmer '997 Figure 1

Art Unit: 3637

8. Kesseboehmer '997 does not disclose expressly the first rail with slots sized to receive a u-shaped member. Bender '989 discloses a bracket (14) with a sidewall, a first rail, and a second rail. The first rail has a plurality of slots (22) and the second rail has a plurality of apertures (18). At the time of the invention it would have been obvious for a person of ordinary skill in the art to take the bracket of Kesseboehmer and add slots as Bender teaches so that objects can be attached to both rails. "Sized to receive" is taken to mean that slot has to be capable of receiving a U-shaped member and bender's slot is capable of receiving a U-shaped member of some size.

9. Kesseboehmer '997 in view of Bender does not expressly disclose the rails comprising a lip portion. Chambers teaches a bracket (Fig 3) with a sidewall (24), a first rail (25), a second rail (30), a first lip portion (26), and a second lip portion (31). At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the bracket of Kesseboehmer '997 in view of Bender by adding a lip portion to the rails as taught by Chambers to strengthen the bracket (Chambers '661, Col. 3, lines 5-9).

Allowable Subject Matter

10. Claims 1-5, and 7 are allowed. The following is a statement of reasons for the indication of allowable subject matter: The prior art does not teach or suggest two brackets that are the same and use two different coupling systems. One coupling system being a u-shaped wire member and the other being one with at least two hooks.

Art Unit: 3637

11. Claims 12-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments filed 2/06/06 have been fully considered but they are not persuasive. Inverse orientation is not properly defined and a mirror orientation such as taught by Carroll is considered to be an inverse orientation.

Conclusion

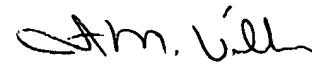
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3637

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TMA
05/01/06



JANET M. WILKENS
PRIMARY EXAMINER
Art Unit 3637